

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:MSR:ILD:TL-N-3288 -99

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G:\CASES\ [REDACTED] 1312(4) advice.wpd

date: July 1, 1999

to: District Director, Illinois
Attn: Carol Poindexter, Group Manager E:1218

from: District Counsel, Illinois CC:MSR:ILD

subject: Mitigation of Statute of Limitations

Taxpayer: [REDACTED]

EIN: <not stated>

Years: [REDACTED] (under audit) [REDACTED] (not under audit, and closed under the normal SOL)

This is in response to your request for advice concerning whether the taxpayer can be allowed an additional interest expense deduction for [REDACTED], even though the normal statute of limitations is closed, and has not been extended.

The taxpayer filed its [REDACTED] return at a time at which the statute of limitations on assessment for the [REDACTED] tax year was still open. On the [REDACTED] return, the taxpayer claimed IRC § 163(j) disqualified interest expense carried forward from [REDACTED]. You have determined that the disqualified interest expense was improperly computed, and have disallowed that amount. You have also determined that the taxpayer should have deducted the disallowed amount on its [REDACTED] return.

We agree with your opinion that the provisions of § 1311, involving mitigation of the effect of the statute of limitations, apply in this case. Section 1312(4) permits an adjustment under § 1311 to be made when the government's determination is to disallow a claimed deduction that should have been claimed for another year, so long as the statute of limitations for the other year was open when the return for the first year was filed. See the example at Treas. Reg. § 1.1312-4(b)(1).

You asked about whether a closing agreement might be appropriate in this case. It is our opinion that, assuming you would otherwise have the authority to sign a closing agreement, you would not have that authority until you opened [REDACTED] and established jurisdiction over it. At that point you could just go ahead and make the adjustment. Therefore, a closing agreement would be redundant.

We wish to draw your attention to IRM 4543, which provides for the use of Form 2259 in the administrative handling of adjustments under the mitigation provisions. We believe that using this form might be the easiest and most effective way for you to handle this matter.

Richard A. Witkowski
District Counsel

By: 

HARMON B. DOW
Special Litigation Assistant

cc: Assistant Chief Counsel (Field Service) CC:DOM:FS
Assistant Regional Counsel (Tax Litigation) CC:MSR:TL
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